

1 THE HONORABLE RICARDO S. MARTINEZ  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
SEATTLE DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Civil Action No. 2:20-cv-01337-RSM

Plaintiff,

vs.

KIRK SPERRY, and  
SPERRY AND SONS CAPITAL INVESTMENTS,  
LLC,

**CORRECTED FINAL JUDGMENT  
AS TO DEFENDANTS KIRK  
SPERRY AND SPERRY AND  
SONS CAPITAL INVESTMENTS,  
LLC**

Defendants.

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This matter came before the Court on Plaintiff Securities and Exchange Commission's  
 (the "Commission" or the "SEC") Motion for Final Judgment as to Defendants Kirk Sperry  
 and Sperry and Sons Capital Investments, LLC ("Sperry and Sons") (collectively,  
 "Defendants"). Upon consideration of the Motion for Final Judgment, and in accordance with  
 the Consent Judgments previously agreed to by the parties, the Commission's Motion for  
 Final Judgment is hereby GRANTED.

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## I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Sperry  
 and Sons is liable for disgorgement of \$125,000, representing net profits gained as a result of  
 the conduct alleged in the Complaint, together with prejudgment interest thereon in the  
 amount of \$34,480.25, and a civil penalty in the amount of \$125,000 pursuant to Section  
 20(d) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77t(d)] and Section 21(d)  
 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78u(d)]. Defendant  
 Sperry and Sons shall satisfy this obligation by paying \$284,480.25 to the Securities and  
 Exchange Commission within thirty (30) days after the entry of this Final Judgment.

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Defendant Sperry and Sons may transmit payment electronically to the Commission,  
 which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may  
 also be made directly from a bank account via Pay.gov through the SEC website at  
<http://www.sec.gov/about/offices/ofm.htm>. Defendant Sperry and Sons may also pay by  
 certified check, bank cashier's check, or United States postal money order payable to the  
 Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center  
 Accounts Receivable Branch  
 6500 South MacArthur Boulevard  
 Oklahoma City, OK 73169

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and shall be accompanied by a letter identifying the case title, civil action number, and name  
 of this Court; Sperry and Sons Capital Investments, LLC as a defendant in this action; and  
 specifying that payment is made pursuant to this Final Judgment.

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Defendant Sperry and Sons shall simultaneously transmit photocopies of evidence of

1 payment and case identifying information to the Commission's counsel in this action. By  
 2 making this payment, Defendant Sperry and Sons relinquishes all legal and equitable right,  
 3 title, and interest in such funds and no part of the funds shall be returned to Defendant Sperry  
 4 and Sons.

5 The Commission may enforce the Court's judgment for disgorgement and  
 6 prejudgment interest by using all collection procedures authorized by law, including, but not  
 7 limited to, moving for civil contempt at any time after 30 days following entry of this Final  
 8 Judgment.

9 The Commission may enforce the Court's judgment for penalties by the use of all  
 10 collection procedures authorized by law, including the Federal Debt Collection Procedures  
 11 Act, 28 U.S.C. § 3001 et seq., and moving for civil contempt for the violation of any Court  
 12 orders issued in this action. Defendant Sperry and Sons shall pay post judgment interest on  
 13 any amounts due after 30 days of the entry of this Final Judgment pursuant to 28 U.S.C. §  
 14 1961. The Commission shall hold the funds, together with any interest and income earned  
 15 thereon (collectively, the "Fund"), pending further order of the Court.

16 The Commission may propose a plan to distribute the Fund subject to the Court's  
 17 approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair  
 18 Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain  
 19 jurisdiction over the administration of any distribution of the Fund and the Fund may only be  
 20 disbursed pursuant to an Order of the Court. Regardless of whether any such Fair Fund  
 21 distribution is made, amounts ordered to be paid as civil penalties pursuant to this Final  
 22 Judgment shall be treated as penalties paid to the government for all purposes, including all  
 23 tax purposes.

24 II.

25 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that  
 26 Defendant Kirk Sperry is liable for a civil penalty in the amount of \$125,000 pursuant to  
 27 Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange  
 28 Act [15 U.S.C. § 78u(d)]. Defendant Kirk Sperry shall satisfy this obligation by paying

1 \$125,000 to the Securities and Exchange Commission within 30 days after entry of this Final  
 2 Judgment.

3 Defendant Kirk Sperry may transmit payment electronically to the Commission, which  
 4 will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be  
 5 made directly from a bank account via Pay.gov through the SEC website at  
 6 <http://www.sec.gov/about/offices/ofm.htm>. Defendant Kirk Sperry may also pay by certified  
 7 check, bank cashier's check, or United States postal money order payable to the Securities  
 8 and Exchange Commission, which shall be delivered or mailed to

9 Enterprise Services Center  
 10 Accounts Receivable Branch  
 11 6500 South MacArthur Boulevard  
 Oklahoma City, OK 73169

12 and shall be accompanied by a letter identifying the case title, civil action number, and name  
 13 of this Court; Kirk Sperry as a defendant in this action; and specifying that payment is made  
 14 pursuant to this Final Judgment.

15 Defendant Kirk Sperry shall simultaneously transmit photocopies of evidence of  
 16 payment and case identifying information to the Commission's counsel in this action. By  
 17 making this payment, Defendant Kirk Sperry relinquishes all legal and equitable right, title,  
 18 and interest in such funds and no part of the funds shall be returned to Defendant Kirk Sperry.

19 The Commission may enforce the Court's judgment for penalties by the use of all  
 20 collection procedures authorized by law, including the Federal Debt Collection Procedures  
 21 Act, 28 U.S.C. § 3001 et seq., and moving for civil contempt for the violation of any Court  
 22 orders issued in this action. Defendant Kirk Sperry shall pay post judgment interest on any  
 23 amounts due after 30 days of the entry of this Final Judgment pursuant to 28 U.S.C. § 1961.  
 24 The Commission shall hold the funds, together with any interest and income earned thereon,  
 25 pending further order of the Court.

26 The Commission may propose a plan to distribute the funds collected from Kirk  
 27 Sperry subject to the Court's approval. Such a plan may provide that the funds collected shall  
 28 be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley

1 Act of 2002. The Court shall retain jurisdiction over the administration of any such  
2 distribution, which may only be disbursed pursuant to an Order of the Court. Regardless of  
3 whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties  
4 pursuant to this Final Judgment shall be treated as penalties paid to the government for all  
5 purposes, including all tax purposes.

6 III.

7 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that, in  
8 accordance with the prior Consent Judgments entered in this case, Defendants are  
9 permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the  
10 Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R.  
11 § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails,  
12 or of any facility of any national securities exchange, in connection with the purchase or sale  
13 of any security:

- 14 (a) to employ any device, scheme, or artifice to defraud;
- 15 (b) to make any untrue statement of a material fact or to omit to state a material  
16 fact necessary in order to make the statements made, in the light of the  
17 circumstances under which they were made, not misleading; or
- 18 (c) to engage in any act, practice, or course of business which operates or would  
19 operate as a fraud or deceit upon any person.

20 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in  
21 Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following  
22 who receive actual notice of this Final Judgment by personal service or otherwise: (a)  
23 Defendants' officers, agents, servants, employees, and attorneys; and (b) other persons in  
24 active concert or participation with Defendants or with anyone described in (a).

25 IV.

26 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that, in  
27 accordance with the prior Consent Judgments entered in this case, Defendants are  
28 permanently restrained and enjoined from violating Section 17(a) of the Securities Act [15

1 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of  
2 transportation or communication in interstate commerce or by use of the mails, directly or  
3 indirectly:

- 4 (a) to employ any device, scheme, or artifice to defraud;
- 5 (b) to obtain money or property by means of any untrue statement of a material  
6 fact or any omission of a material fact necessary in order to make the  
7 statements made, in light of the circumstances under which they were made,  
8 not misleading; or
- 9 (c) to engage in any transaction, practice, or course of business which operates or  
10 would operate as a fraud or deceit upon the purchaser.

11 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in  
12 Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following  
13 who receive actual notice of this Final Judgment by personal service or otherwise: (a)  
14 Defendants' officers, agents, servants, employees, and attorneys; and (b) other persons in  
15 active concert or participation with Defendants or with anyone described in (a).

16 V.

17 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall  
18 retain jurisdiction of this matter for the purposes of enforcing the terms of this Final  
19 Judgment.

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21 DATED this 1<sup>st</sup> day of December, 2021.

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26 RICARDO S. MARTINEZ  
CHIEF UNITED STATES DISTRICT JUDGE  
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